

§ 386.11

49 CFR Ch. III (10–1–15 Edition)

by mail, or on a date certain after service by mail, 5 days will be added to the prescribed period.

[70 FR 28480, May 18, 2005, as amended at 78 FR 58481, Sept. 24, 2013]

Subpart B—Commencement of Proceedings, Pleadings

§ 386.11 Commencement of proceedings.

(a) *Driver qualification proceedings.* These proceedings are commenced by the issuance of a determination by the Director, Office of Carrier, Driver, and Vehicle Safety Standards (MC-PS), in a case arising under § 391.47 of this chapter or by the issuance of a letter of disqualification.

(1) Such determination and letters must be accompanied by the following:

(i) A citation of the regulation under which the action is being taken;

(ii) A copy of all documentary evidence relied on or considered in taking such action, or in the case of voluminous evidence a summary of such evidence;

(iii) Notice to the driver and motor carrier involved in the case that they may petition for review of the action;

(iv) Notice that a hearing will be granted if the Assistant Administrator determines there are material factual issues in dispute;

(v) Notice that failure to petition for review will constitute a waiver of the right to contest the action; and

(vi) Notice that the burden or proof will be on the petitioner in cases arising under § 391.47 of this chapter.

(2) At any time before the close of hearing, upon application of a party, the letter or determination may be amended at the discretion of the administrative law judge upon such terms as he/she approves.

(b) *Notice of Violation.* The Agency may issue a Notice of Violation as a means of notifying any person subject to the rules in this part that it has received information (*i.e.*, from an investigation, audit, or any other source) wherein it has been alleged the person has violated provisions of the FMCSRs, HMRs, or FMCCRs. The Notice of Violation serves as an informal mechanism to address compliance deficiencies. If the alleged deficiency is not

addressed to the satisfaction of the Agency, formal enforcement action may be taken in accordance with paragraph (c) of this section. A Notice of Violation is not a prerequisite to the issuance of a Notice of Claim. The Notice of Violation will address the following issues, as appropriate:

(1) The specific alleged violations.

(2) Any specific actions the Agency determines are appropriate to remedy the identified problems.

(3) The means by which the notified person can inform the Agency that it has received the Notice of Violation and either has addressed the alleged violation or does not agree with the Agency's assertions in the Notice of Violation.

(4) Any other relevant information.

(c) *Civil penalty proceedings.* These proceedings are commenced by the issuance of a Notice of Claim.

(1) Each Notice of Claim must contain the following:

(i) A statement setting forth the facts alleged.

(ii) A statement of the provisions of law allegedly violated by the respondent.

(iii) The proposed civil penalty and notice of the maximum amount authorized to be claimed under statute.

(iv) The time, form, and manner whereby the respondent may pay, contest, or otherwise seek resolution of the claim.

(2) In addition to the information required by paragraph (c)(1) of this section, the Notice of Claim may contain such other matters as the Agency deems appropriate.

(3) In proceedings for collection of civil penalties for violations of the motor carrier safety regulations under the Motor Carrier Safety Act of 1984, the Agency may require the respondent to post a copy of the Notice of Claim in such place or places and for such duration as the Agency may determine appropriate to aid in the enforcement of the law and regulations.

[50 FR 40306, Oct. 2, 1985, as amended at 53 FR 2036, Jan. 26, 1988; 56 FR 10182, Mar. 11, 1991; 65 FR 7756, Feb. 16, 2000; 70 FR 28480, May 18, 2005; 78 FR 58481, Sept. 24, 2013]